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UNITED STATES DEPARTMENT OF AGRICULTURE

FOREST SERVICE

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STATE FORESTRY LAWS

A parallel classification showing the comparative
progress of each State in forestry legislation

MONTANA

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PURPOSE OF COMPILATION

Information about the forestry laws of the various States, especially about those laws dealing with certain specific problems, is being demanded more and more; and requests for such information, coming from legislators, State administrative officers, forestry associations, forest schools, and other bodies and individuals, have led to the compilation, informally, of such State laws as bear more or less directly on the practice of forestry.

The purpose of the compilation, of which this serial is a part, is to make easy a comparative study of the laws of the different States and to further the development of practical forestry legislation. By the classification of the laws and parts of laws under the headings, "Administration," "Fires," "Public Forests," and "Taxation," the comparison is simplified, and the progress of each State, or lack of it, in these particulars is clearly shown.

The better to accomplish this educational aim, the great mass of timber and tree laws and those finer points of reference proper only to a legal or administrative manual have been omitted.

PART I.—ADMINISTRATION.

(This part comprises the provisions of law, if any, defining the general administrative duties of the regularly constituted State forestry officials; also certain miscellaneous forestry provisions. For specific provisions, if any, concerning administrative duties of these or other State officers in connection with forest fires, State and municipal forests and nurseries or other State lands, or forest taxation, see Parts II, III, and IV, respectively.)

SEC. 9, CH. 147, L., 1909.

State forester: Appointment—Qualifications—Salary and expenses—Term—Bond—Required to be a civil executive officer.—The Governor, by and with the advice and consent of the Senate, shall appoint a state forester, who shall be skilled in the science of forestry, whose salary shall be twenty-five hundred (2500) dollars per annum, and actual necessary expenses while engaged in outside work, connected with his office, and whose term of office shall be four years, or until his successor shall be appointed and qualified, and he shall give a bond to the state

in the sum of ten thousand (10,000) dollars, to be approved by the board [State Board of Land Commissioners]¹ and filed with the Secretary of State; and he shall be a civil executive officer.

SEC. 10, AMENDED BY SEC. 2, CH. 118, L., 1911.

State forester, duties in general: Selection, appraisalment, etc., and control of State timber lands—Act as secretary of forestry board—Execute all forestry matters—Charge of fire wardens—Care of State parks and forests—Prevention of fires—Enforcement of laws—Lectures—Annual report and recommendations—Notices, posting.—The State Forester shall, under the direction and control of the State Board of Land Commissioners, do all the field work in the selection, location, examination, appraisalment, and re-appraisalment of

¹ The state board of land commissioners is composed of the governor, superintendent of public instruction, secretary of state, and attorney general, and has "direction and control of all lands belonging to the State, to manage the same as the best interests of the State shall require." [L. 1909, ch. 147, sec. 1.]

state timber lands, whether now belonging to the state or hereafter granted to the state; he shall do all acts required of him to be performed by the said board, and under the direction of said board shall have general charge of the timber lands of the state. He shall act as secretary of the Forestry Board.¹ He shall, under the supervision of the State Board of Land Commissioners, execute all matters pertaining to forestry within the jurisdiction of the state; have charge of all fire wardens of the state, and direct and aid them in their duties; direct the protection and improvement of state parks and forests; take such action as is authorized by law to prevent and extinguish forest, brush, and grass fires; enforce the laws pertaining to forest and brush-covered lands, and prosecute for any violation of such laws. He shall deliver a course of at least six lectures on practical forestry to the students attending the State University,² the State Agricultural College, and the State Normal School, during each school year. He shall prepare annually a report to the Governor on the progress and condition of the state forest work, and recommend therein plans for improving the state system of forest protection, management and replacement. He shall furnish notices, printed in large letters on cloth, calling attention to the danger from forest fires, and to the forest fire and trespass laws and their penalties. Such notices shall be posted by the fire warden in conspicuous places in the several counties of the state, and particularly in brush and forest covered country, at frequent intervals along streams and lakes frequented by tourists, hunters, and fishermen, at established camping sites, and in every postoffice in the forested region.

SEC. 16.

Posted notices, injury or destruction of—Penalty.—Any person who shall destroy, deface, remove or disfigure any sign, post or warning notice posted under the provisions of this act shall be guilty of a misdemeanor, and punishable upon conviction, by a fine of not less than fifteen dollars and not more than two hundred and fifty dollars, or imprisonment in the county jail for a period of not less than ten days nor more than three months, or by both such fine and imprisonment.³

SEC. 15.

Expenses of State forester, assistant forester, and fire wardens, how paid.—That the actual expenses and expenditures of the state forester, assistant forester and fire wardens necessarily incurred under this act, shall be paid in the same manner as are other expenses incurred in managing the state lands.

SEC. 20.

Forestry board: Personnel—Chairman—Quorum.—The register of state lands, together with the state land agent and the state forester, shall constitute a for-

estry board, of which the register of state lands shall be chairman. A majority of said board shall constitute a quorum for the transaction of business.

SEC. 21.

Forestry board, duties, in general: Reforestation—Prevention of forestry waste, and forest fires—Management of forests of State—Encouragement of private owners of timber—Conservation of forests on watersheds—Reports and recommendations.—

It shall be the duty of the Forestry board to ascertain the methods of reforesting the denuded forest lands of the state; to prevent forestry waste, and the destruction of forests by fire, to manage the forests of the state on forestry principles, to encourage private owners in preserving and growing timber, and to conserve forest tracts around the head waters and on the water sheds of the water courses of the state; it shall make reports of its doings and recommendations to each session of the legislature, and, from time to time, with approval of the state board of land commissioners, publish, for popular distribution, such of its conclusions and recommendations as may be of public interest and concern.

Reforestation of watersheds, and expenditures therefor.—The state board of forestry may re-forest the water sheds of the state and expend such sums of money therefor as may be appropriated for that purpose by the legislative assembly.

SEC. 22, AMENDED BY SEC. 3, CH. 118, L. 1911.

State Board of Land Commissioners, power to appoint clerk, and other office force: Duties, compensation, and bond of clerk—Receiving clerk, duties of.—The State Board of Land Commissioners shall have power to appoint one clerk whose salary shall be such sum as the board may fix and allow, not exceeding the sum of Fifteen Hundred (\$1500.00) Dollars per annum who shall give a bond to the State in such sum as the Board of Land Commissioners may designate, and he shall act as clerk of the register, of the State Land Agent, and of the State Forester, without extra compensation; and said board may employ all such other office force as may be necessary to carry out the provisions of this act, and may designate one of said office force as Receiving Clerk and may require such Receiving Clerk to give such bond as the Board may order, and to make purchase of all necessary books, plats and other supplies.

SEC. 23.

Salaries of State forester and assistants, and other State land officials, how paid.—The salary of the register of state lands and his deputy, of the state land agent, and his Assistants, the state forester, and his assistant, the clerk of the state board of land commissioners, together with the pay of all the assistants and clerks in the state land office, shall be paid out of the moneys in the several land grant income funds, and shall be apportioned among the several funds in proportion to the amount of land in

¹ See secs. 20, 21, on this page.

² A forestry school, to be operated as a department of the University of Montana, has also been established by ch. 131, L., 1913. (See Session laws.)

³ For disposition of fines, see sec. 104, on p. 3.

each of the land grants from which the several funds are derived. All such salaries shall be paid monthly out of the land grant income funds, and apportioned in December of each year among the several funds by an order of the state board of land commissioners, directed to the state auditor and to the state treasurer.

SEC. 25.

Assistant forester: Appointment—Qualifications—Term of office—Compensation—Bond.—The state board of land commissioners is hereby authorized to appoint one assistant forester, with like qualification as the state forester, at such time or times as may be deemed necessary, to assist the state forester in any of the duties of his office; and he shall draw pay only when actually engaged in the performance of such work, and shall hold office at the pleasure of the board, and his pay shall be not to exceed one hundred and fifty (150) dollars per month, together with actual necessary expenses while engaged in outside work connected with the office. He shall give such bond for the faithful performance of his duties as the state board of land commissioners may require.

SEC. 27.

State board of land commissioners: To keep records of forest lands and accounts of timber sales.—The state board of land commissioners shall cause to be kept accurate records showing the location, extent and character of all forest lands, and the kind and character of timber growing thereon, and also an account of all timber sold, the person or persons to whom sold, the amount of money received therefor, and the disposition of the moneys so received.

SEC. 104.

Fines, fees, and forfeitures, disposition of.—All moneys received as fines, fees, or forfeiture under this Act, or as penalties for violations of the provisions of this Act, and not otherwise provided for, shall be paid to the State Treasurer and by him credited to the land office expense fund.

SEC. 105.

Board of county commissioners may provide money for forest protection and management.—The Board of County Commissioners of any county may provided [provide] money for the purposes of forest protection, improvement and management.

SEC. 106.

Violation of provisions of act, by officer or employee, penalties.—Any officer or employee of the State of Montana guilty of a violation of any of the provisions of this Act and not herein otherwise provided for is hereby declared guilty of a felony, and shall be punished by imprisonment in the State Prison for a term not exceeding ten years, or by a fine not exceeding Five Thousand Dollars, or by both fine and imprisonment.

PART II.—FIRES.

(This part comprises the general provisions of law, if any, concerning protection from forest fires. For localized provisions, if any, concerning protection of State-owned lands, see Part III.)

(1) PROTECTIVE SYSTEM.

(This subdivision comprises the provisions of law, if any, defining the personnel and the administrative duties of the State organization charged with the prevention, detection, control, and extinguishment of forest fires. For specific provisions, if any, concerning similar duties in connection with railroad fires, slash disposal, and fallow and other fires, see subdivisions (2), (3), and (4), respectively.)

SEC. 11, CH. 147, L. 1909.

Fire wardens, appointment, compensation, and duties, in general: Volunteer fire wardens—Ex officio fire wardens—Federal forest officials, as volunteer fire wardens.—The state forester shall appoint in such number and localities as he deems wise, public spirited citizens to act as volunteer fire wardens. Every sheriff, under sheriff, deputy sheriff, game warden and deputy game warden, shall be ex-officio a fire warden, but shall not receive any additional compensation by reason of the duties hereby imposed, and they shall be deemed paid fire wardens under the terms of this act. The supervisors and rangers of the federal forest reserves within this state, whenever they formally accept the duties and responsibilities of fire wardens, may be appointed volunteer fire wardens, and shall have all the powers given to fire wardens by this act. The fire wardens shall promptly report all fires to the state board of forestry, take immediate and active steps toward their extinguishment; report any violation of forest laws; and assist in apprehending and convicting offenders.

SEC. 12.

Arrests without warrants, by State forester and fire wardens—Right of entry—Prosecutions, how effected—Failure of fire wardens to perform duties, penalties—Office vacated.—The state forester, and all fire wardens, shall have the power of peace officers to make arrests without warrants for violations, in their presence, of any state or federal forest laws, and no fire warden shall be liable for civil action for trespass committed in the discharge of their [his] duties. Any fire warden who has information which shows, with reasonable certainty, that any person has violated any provision of such forest laws shall immediately take action against the offender, by making complaint before the proper magistrate, or by information to the proper county attorney, and shall obtain all possible evidence pertaining thereto. Failure on the part of any paid fire warden to comply with the duties prescribed in this act, shall be a misdemeanor, and punishable by a fine of not less than twenty dollars, nor more than one thousand dollars, or imprisonment in the county jail for not less than ten days nor more than twelve

months, or by both such fine and imprisonment,¹ and upon his conviction the district court wherein he is convicted shall forthwith declare his office vacant, and notify the proper appointing power thereof.

SEC. 13.

Impressing assistance in fighting fires—Penalties for refusal—Limit of time.—All fire wardens shall have authority to call upon any able bodied citizen between the ages of eighteen and fifty years, resident in the vicinity, for assistance in putting out fires; and any such person who refuses to obey such summons, except for good and sufficient reason, is guilty of a misdemeanor, and upon conviction, shall be fined in a sum not less than fifteen nor more than fifty dollars¹ or imprisonment in the county jail not less than one nor more than thirty days or both such fine and imprisonment; provided, that no citizen shall be called upon to fight fire a total of more than five days in one year.

SEC. 14.

Forest officers required to protect timber from fires—Emergency expenditures—Limit of expenses.—The state forester, assistant forester, and all fire wardens (except volunteer wardens), under such rules and regulations as the state board of land commissioners may provide, shall protect the timber of the state, and especially the timber owned by the state, from destruction by fire,² and for such purpose, in emergencies, may employ men and incur other expenses, when necessary; provided, that no fire warden shall incur any expense in excess of fifty dollars, without express authority of the state board of land commissioners.

SEC. 17.

County attorneys to prosecute—Failure, a misdemeanor; penalty; vacation of office—Actions against county attorneys—Penalties apply to magistrates, when.—Whenever an arrest shall be made for any violation of the provisions of this act, or whenever any information of such violations shall be lodged with him, the county attorney of the county in which this [the] act was committed must prosecute the offender or offenders if in his judgment the facts warrant the same. If any county attorney shall fail to comply with the provisions of this section he shall be guilty of a misdemeanor, and upon conviction, shall be fined not less than one hundred dollars nor more than one thousand dollars,¹ and, upon his conviction, the district court wherein he is convicted shall forthwith declare his office vacant, and notify the proper appointing power thereof. Actions against the county attorney shall be brought by the attorney general in the name of the state. The penalties of this section shall also apply to any magistrate, with proper authority who refuses or neglects to cause the arrest and prosecution of any person or persons, when a complaint under oath of a violation of any of the provisions of this act has been lodged with him.

¹ For disposition of fines, see sec. 104, on p. 3.

² See also sec. 10, on p. 2, for fire duties, in general, of the State forester.

(2) RAILROAD FIRES.

(This subdivision comprises the provisions of law, if any, defining the responsibility of railroad and logging companies, the precautions to be taken by them, and their liability for damages occasioned in the operation and maintenance of their trains and rights of way; also provisions concerning the use of spark arresters and other safeguards on traction, thrashing, other portable and sawmill engines, and boilers.)

SEC. 4310, REV. CODES, MONT., 1907.

Rights of way to be kept clear from dead grass, etc.—Liability for damages caused by fire—Prima facie evidence of negligence—Requirement applies only to rights of way.—It shall be the duty of all railroad corporations or railroad companies operating any railroad within this state to keep their railroad track, and either side thereof, for a distance of one hundred feet on each side of the track or roadbed, so far as it passes through any portion of this state, free from dead grass, weeds or any dangerous or combustible material; and any railroad company or corporation failing to keep its railroad track and each side thereof free as above specified, shall be liable for any damages which may occur from fire emanating from operating such railroad, and a neglect to comply with the provisions of this section in keeping free any railroad track, and either side for a distance equal to the space of ground covered by the grant of the right of way for the railroad corporation or company, shall be prima facie evidence of negligence on the part of any such railroad corporation or company. But no railroad corporation or company shall be required to keep free as above specified any land not a part of its right of way. [Sec. 952, Code 1895, Civil.]

SEC. 4360.

Fire-guards, ploughing and burning.—That every railroad corporation operating its lines of road or any part thereof within this State, shall, between the fifteenth day of April and the first day of July in the year 1903 and each succeeding year thereafter, plough in a good and workmanlike manner, covering the sod well, upon each side of its line of road wherever it passes through a range or grazing country, a continuous strip of not less than six feet in width on each side of its track, as a fire-guard, which said strip shall as near as practicable run parallel with the line or lines of said railroad, and in addition to such ploughing, said railroad company shall cause to be burned between the fifteenth day of July and the fifteenth day of September of each year, all the grass and vegetation between the said ploughed strips and a line of fifty (50) feet inside said ploughed strips; *Provided* that such fire guard so ploughed and burned need not be constructed within the limits of any town, village or city nor in private fields under cultivation nor along the line of such railroad whenever the same runs through the mountains or elsewhere where such ploughing or burning would be impracticable; and *provided further*, that said fire guard or portion thereof, need not be ploughed or burned on or through any lands which may be released from the opera-

tion of this act by the Board of County Commissioners of the county wherein such land is situated by their written certificate of release filed in the office of the County Clerk of the said County; *Provided further*, that said ploughing be not less than three hundred (300) feet from the center of the railroad track on each side of same. Except in cases of cultivated fields and then such ploughing and burning shall be done closer to such railroad but not less than seventy feet from the center of the track. [Sec. 1, ch. 63, L. 1903.]

SEC. 4361.

Failure of railroad to plough or burn fire-guards: County commissioners to perform work—Recovery of double costs—Liability of company for damages caused.—That if any railroad company fails to comply with any of the provisions of Section 1 of this Act the Board of County Commissioners of the County wherein such violation occurs shall cause the neglected ploughing or burning or both therein provided for, to be done, and may in a suit to be brought in their name, as said board, in the District Court having jurisdiction, recover double the amount of the cost of such ploughing or burning or both with reasonable attorney fees to be fixed by the Court, and such railroad company shall be liable further for all damages caused by its failure to comply with this act. [Sec. 2, ch. 63, L. 1903.]

(3) SLASH DISPOSAL.

(This subdivision comprises the provisions of law, if any, for slash disposal after lumbering and other cutting operations.)

SEC. 53, CH. 147, L. 1909, AMENDED BY SEC. 4, CH. 118, L. 1911.

Slash disposal on State lands: Brush and slashings to be piled and disposed of so as to prevent forest fires.—(For text of provision, see this section on p. 6.)

(4) FALLOW AND OTHER FIRES.

(This subdivision comprises the provisions of law, if any, concerning the burning of fallow, brush, etc., by farmers, and the general setting of fires to woods by hunters, fishermen, and others.)

SEC. 8768, REV. CODES, MONT., 1907.

Penalties for carelessly setting fire to timber, woodland, or grass; or failing to extinguish camp fire, etc.—Every person who carelessly sets fire to any timber, woodland or grass, except for useful or necessary purposes, or who at any time makes a camp-fire, or lights a fire for any purposes whatever without taking sufficient steps to secure the same from spreading from the immediate locality where it is used, or fails to extinguish such fire before leaving it, is punishable by imprisonment in the county jail not exceeding one year, or by fine not exceeding two thousand dollars, or both. [Sec. 1071, Code 1895, Penal.]

SEC. 8769.

Penalties for wantonly setting fire to timber, woodland, or grass; or maliciously failing to extinguish fire made for necessary purpose.—Every person who wantonly or designedly sets fire to any timber, woodland or grass, or maliciously fails to extinguish a fire after making the same for a necessary purpose, before leaving it, is punishable by imprisonment in the state prison not exceeding five years, or by fine not exceeding five thousand dollars, or both. [Sec. 1072, Code 1895, Penal.]

PART III.—PUBLIC FORESTS.

(This part comprises the provisions of law, if any, for the establishment and care of State and municipal forests and nurseries, and for the practice of forestry on these and on other lands owned by the State.)

(1) STATE FORESTS.

(For other provisions, if any, concerning State forests and nurseries, see Part I.)

SEC. 1, CH. 78, L. 1911.

Ceding to United States school lands within national forests—Selection of lieu timber lands.—All sections of lands numbered sixteen and thirty-six in surveyed townships and all unsurveyed sections which, when surveyed will be sections sixteen and thirty-six, within the boundaries of the National Forests within this state shall be deemed and held ceded to the United States as soon as an act shall be passed by Congress and approved by the President ceding to the state of Montana an equivalent number of sections of land situated in forest reserves and principally valuable for the timber which is growing thereon, which lands shall be known as lieu timber lands, and which lieu timber lands shall be selected as other state lands are selected from the public domain.

SEC. 2.

Lieu timber lands to be selected in compact body, or bodies, for State forest—Location of selections.—In selecting the lieu timber lands the State Board of Land Commissioners shall select the same as nearly as practicable in one compact body, or, if that be not practicable, then in one or more compact bodies, to the end that the same may be managed and controlled as a state forest, and the selections may be made from land in any county or counties of the State.

SEC. 1, CH. 81, L. 1915.

State Board of Land Commissioners empowered to relinquish to United States unsurveyed school sections in national forests for equivalent lien lands—Existing contracts validated.—That the State Board of Land Commissioners of the State of Montana, be and are hereby authorized and empowered to enter into contracts or agreements with the United States, or any department thereof, having jurisdiction, waiving and relinquishing to the United States any and all rights of the State of Montana in and to Sections Sixteen (16) and

Thirty-six (36) of each township, when said Sections are situated within a Federal Forest Reserve, and are at the date of such contract or agreement unsurveyed. Provided, that the State of Montana shall in lieu of the rights so waived and relinquished, receive from United States other lands equal in acre or value, and all contracts or agreements heretofore entered into between the State Board of Land Commissioners of the State of Montana and the United States or any department thereof relative to the waiving by the State of Montana of its rights to Section Sixteen and Thirty-six in any township in said State and the selection of lieu lands therefor by said State either according to area or value be and the same are hereby ratified, confirmed and validated.

SEC. 2.

All Acts and parts of Acts in conflict herewith are hereby repealed.

SEC. 53, CH. 147, L. 1909, AMENDED BY SEC. 4, CH. 118, L. 1911.

Sale of timber on State lands: State Board of Land Commissioners empowered to make sale—Regulation of cut, and other requirements.—(For text of these provisions, see this section, on this page.)

SEC. 54, CH. 147, L. 1909, AMENDED BY SEC. 5, CH. 118, L. 1911.

Sale of timber on State lands: Purchaser's bond conditioned upon cutting in compliance with regulations by State Board of Land Commissioners.—(For text of these provisions, see this section, on this page.)

SEC. 55, CH. 147, L. 1909, AMENDED BY SEC. 6, CH. 118, L. 1911.

Permits to show large timber left.—(For text of this provision, see this section, on this page.)

(2) OTHER STATE LANDS.

(Laws which provide merely for the protection of State lands other than State forests from fire and from timber and other forms of trespass, and for the sale of timber and other forest products therefrom, are not included because their intent is not one of forestry.)

SEC. 53, CH. 147, L. 1909, AMENDED BY SEC. 4, CH. 118, L. 1911.

Sale of timber on State lands: State Board of Land Commissioners empowered to make sale—Regulation of cut—Removal of timber subject to rules for preservation of young timber and prevention of fire—Slash disposal requirements—What estimates and appraisals must show in re measurements both above and below 8 inches in diameter; location of timber relative to fire risks and transportation facilities; and value for watershed protection.—The State Board of Land Commissioners shall have power to sell timber on state lands at such price per thousand feet as in its judgment shall be for the best interest of the state, but not otherwise; but no such sale of live timber shall be

made at a less price than three dollars per thousand feet. But no live timber less [than] eight inches in diameter, twenty feet from the ground, shall be sold or permitted to be cut. All timber sold or cut from state lands shall be cut and removed, under such rules and regulations for the preservation of standing timber, and the prevention of fires, as the State Board of Land Commissioners shall prescribe; in all cases the board must require the person cutting the timber to pile the brush and slashings and dispose of the same in such manner as to prevent forest fires. Before any permit shall be granted, the timber shall be estimated and appraised under the direction of the state forester, upon the request, and subject to the approval of the State Board of Land Commissioners, which estimates and appraisal shall show as nearly as may be the amount and value per thousand feet of all timber measuring not less than eight inches in diameter, twenty feet from the ground, and also all other timber measuring below this standard on each tract or lot, together with a statement of the situation of the timber relative to risk from fires or damage of any kind, its distance from the nearest lake, stream, or railroad, and its value and position as a protection to a water shed.

SEC. 54, CH. 147, L. 1909, AMENDED BY SEC. 5, CH. 118, L. 1911.

Sale of timber on State lands: Purchaser's bond conditioned upon cutting in compliance with regulations by State Board of Land Commissioners.—* * * no timber shall be sold after the passage of this act until the same has been re-appraised and estimated since March 19, 1909. Every person purchasing timber at such sale, before the execution of the permit to cut the same, shall execute a bond to the State of Montana, * * * and further conditioned upon the cutting of such timber in compliance with such rules and regulations as may be prescribed by the State Board of Land Commissioners.

SEC. 55, CH. 147, L. 1909, AMENDED BY SEC. 6, CH. 118, L. 1911.

Permits to show large timber left.—All permits to cut live timber under the provisions of this Act, shall be made according to a form prescribed by the Attorney General, and shall be signed by the party applying for the same and by the president and secretary of the State Board of Land Commissioners.

Said permits shall contain * * * the amount of large timber required to be left standing * * *.

(3) MUNICIPAL FORESTS.

PART IV.—TAXATION.

(This part comprises the provisions of law, if any, covering the classification and taxation of forested lands and lands to be forested, the purpose of which is to encourage the practice of forestry by private owners; also such bounty and exemption laws as have a like purpose. For similar taxation provisions, if any, concerning State or municipal forests, or other State lands, see Part III.)

